

Private Admonition - Board Case No. 45, 2001. Date of Sanction: February 7, 2002.

A panel of the Preliminary Review Committee ("PRC") offered the sanction of a private admonition to an attorney in Board Case No. 45, 2001, for violation of Rule 1.8(c) of the Delaware Lawyers' Rules of Professional Conduct, which states that "[a] lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee." The attorney consented to the imposition of the private admonition.

In 1996, at the request of a long-time friend and neighbor who had moved out of state (the "client"), the attorney prepared a document amending the client's trust agreement (the "Trust Amendment"). The Trust Amendment provided the attorney's children (who were not related to the client) with substantial monetary gifts for payment of their undergraduate college education expenses, both during the client's lifetime and after the client's death. The client's trustee was an out-of-state bank, which had been providing the client with financial and estate planning assistance. Several months after the client offered to make the gifts and the attorney had agreed to them being made, the attorney was contacted on the telephone by the client and the trustee's financial officers, with a request that he prepare the Trust Amendment. The attorney expressed concern about the potential for a conflict of interest. The attorney was, however, persuaded to carry out the request notwithstanding those concerns. Thereafter, when the attorney forwarded the draft Trust Amendment to the client, the attorney advised the client in writing to have the document reviewed by the client's financial advisers with the bank and by the client's local attorney. The document included a space not only for the signatures of two officers of the bank, but also for a space for a signature indicating that the document was "Approved by Counsel for the Grantor." Ultimately, however, the document was signed only by the two officers for the bank, and not by the client's local attorney. The ODC's investigation also reflected that, earlier in 1996, at the client's request, the Delaware attorney had been consulted by the client's local attorney about the client's will and estate planning matters. Payments were made by the client for the undergraduate college education expenses of the attorney's children prior to the client's death in 2000, and continued thereafter to be made by the trustee-bank for the expenses of the child who was still enrolled in college at that time.

In offering the sanction of a private admonition, the PRC considered as an aggravating factor the attorney's substantial experience in the practice of law. In mitigation, the PRC considered: (1) the absence of a prior disciplinary record; (2) the attorney's full cooperation with the ODC's investigation; (3) the absence of a dishonest or selfish motive on the attorney's part, including evidence of the existence of a longstanding close social relationship between the attorney and the client, and a close social relationship between the client and the attorney's children for many years while they were neighbors; (4) at the time that the Trust Amendment was prepared and executed, the client was working with competent financial advisers who were independent of the attorney, and who had knowledge of, reviewed, and signed the Trust Amendment, after discussing its provisions with the client; and (5) the absence of an issue as to the client's testamentary capacity at the time that the Trust Amendment was prepared and executed.

The sanction of a private admonition was conditioned on the payment of the costs of the ODC's investigation, pursuant to Rule 27 of the Delaware Lawyers' Rules of Disciplinary

Procedure.